IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 227 OF 2005

WITH

CIVIL APPLICATION NO. 982 OF 2002

Sou. Geetabai A. Dudhane & Ors. ..Appellants

versus

Daultati Babu Kudapane (Yadav)
since deceased through heirs
Sou. Gitabai A. Dhudhane & Ors ..Respondents

Ms. Smita Mane for the Appellants.

Mr. S. Yadav for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH AUGUST, 2005

P.C. :

1. Heard.

2. One Babu had two sons Daulati and Shripati. Shripati had three daughters who were original plaintiffs. Daulati had no issue. He gifted the entire property inherited to him of Babu to a stranger. All the three daughters of Shripati therefore filed a suit for partition. That suit was

decreed. The stranger i.e. transferee or donee from Daulati filed an appeal. That appeal was allowed to the extent of share of Daulati and hence this Second Appeal.

3. Counsel for the appellants tried to contend that three daughters of Gitabai are Class I heir of Babu, that is a wrong statement. After death of Babu there were two issues only Daulati and Shripati. Therefore, his property devolved upon these two persons. Both having equal share of 50% and Shripati's three daughters will get 1/3rd share each in the 50% share of Shripati. They cannot claim anything in the share of Daulati and since Daulati had no issues, he had full right to dispose of his property according to his Will or desire. Therefore, the appellate court was fully justified in declaring that the gift deed was not binding upon the three plaintiffs to the extent of 1/2 share of their father's property.

4. Counsel for the appellants tried to contend that it was a copercenery and therefore undivided share could not be gifted. There is no legal support to this contention. There is no question of coparcenery. After Babu - the original owner the property was directly inherited by Daulati and Shripati. Babu admittedly died in 1956. There is no substance in this appeal. The same is dismissed along with the Civil Application.

25.8.2005 (D.G. DESHPANDE, J.)